

1 A I do.

2 Q And that's because they are either
3 next to ESPN or the Regional Sports Networks,
4 right, sir?

5 A Yes.

6 Q Okay. Unfortunately, and she has
7 been able to make all of these moves, all
8 adjacent to ESPN, "happened by our nudging."
9 Do you see that, sir?

10 A I do.

11 Q "And no monetary incentive." Do
12 you see that, sir?

13 A I do.

14 Q So "our nudging," she has been out
15 nudging to get this channel placement. Is
16 that the way you read it, sir?

17 A Yes.

18 Q Okay. But there are [REDACTED]
19 subs that fall into unfavorable channel
20 positions is what she says to you. Do you see
21 that?

22 A Yes.

1 Q And she talks about some moves in
2 large markets that are not in favorable
3 compliance, do you see that?

4 A Yes.

5 Q Including in Philadelphia, Denver,
6 Nashville, Houston, and so forth.

7 A Yes.

8 JUDGE SIPPEL: What does that
9 mean, "compliance, not in favorable
10 compliance"?

11 THE WITNESS: Well, this came up
12 in my deposition. I don't actually remember
13 this e-mail or what was the context of this e-
14 mail.

15 JUDGE SIPPEL: I'm trying to get
16 the concept. What is the concept of
17 compliance here?

18 THE WITNESS: I think she is -- as
19 I'm reading this, I think she is drawing a
20 distinction between what is referred to as
21 "favorable" up above. I'm not sure
22 "compliance" is the right word. I think she

1 is just drawing a distinction between what is
2 defined as "favorable."

3 JUDGE SIPPEL: All right. Go
4 ahead. Go ahead.

5 BY MR. PHILLIPS:

6 Q "Compliance" would mean, sir, that
7 they are in compliance with being in favorable
8 positions, isn't that the way you read it?

9 A Yes.

10 Q Thank you.

11 JUDGE SIPPEL: Well, is that
12 channel position, compliance with --

13 MR. PHILLIPS: Yes, that's what
14 it's referring to.

15 JUDGE SIPPEL: Compliance with
16 favorable -- and who is the party that has to
17 be in compliance? The person who controls the
18 channel assignments?

19 BY MR. PHILLIPS:

20 Q And who controls the channel
21 assignments, Mr. Bond?

22 A The local systems.

1 Q So Ms. Gaiski -- just to make it
2 clear, Ms. Gaiski is talking about going out
3 and nudging and otherwise taking actions to
4 get the local systems to make sure that
5 Comcast-owned Versus is in a favorable channel
6 position on those local systems, right?

7 A Yes. As I said, I didn't have a
8 recollection about this. But what it's
9 talking about is favorable -- what is defined
10 as "favorable channel position" for Versus in
11 these markets.

12 Q Now, I'd like to take up another
13 example of sort of the intersection between
14 programming and cable, if I may, Mr. Bond. Do
15 you recall that there was a proposal -- let me
16 show it to you. I think it's easier. I don't
17 think I can adequately explain it.

18 May I approach, Your Honor?

19 JUDGE SIPPEL: Yes, you may.

20 BY MR. PHILLIPS:

21 Q I would like to show you what is
22 Tennis Channel Exhibit 35, which is already in

1 evidence.

2 JUDGE SIPPEL: Thank you. This is
3 from Mr. Burke to Jeff Shell. And you are
4 somehow or other involved -- you're on this in
5 some way.

6 THE WITNESS: I'm on the bottom.

7 JUDGE SIPPEL: Yes, sir. I see it
8 now.

9 BY MR. PHILLIPS:

10 Q So, Mr. Bond, you have seen this
11 before, haven't you?

12 A I have.

13 Q This is Mr. Shell, who is on the
14 programming side writing to you and Mr. Burke
15 who is -- Mr. Burke is the boss of both of
16 you, correct, sir?

17 A Yes.

18 Q And he is running by you an idea
19 that -- in which Versus can get valuable
20 tennis rights to the U.S. Open, correct, sir?

21 A Yes.

22 Q And the way that they are -- that

1 he is thinking about getting valuable tennis
2 rights of the U.S. Open onto Versus is through
3 an equity investment in The Tennis Channel,
4 correct, sir?

5 A Give me a moment, please.

6 (Pause.)

7 Yes, that's what is stated in the
8 last paragraph.

9 Q And Mr. Burke, who is your boss,
10 tells you that he thinks it's an interesting
11 idea, correct, sir?

12 A Yes.

13 Q Now, tell me something, the -- do
14 you see where the first thing Mr. Shell says
15 is that the USTA investment probably increases
16 the chances that the channel will survive?

17 A Yes.

18 Q Before that, there was a -- was
19 there considered to be a risk to Comcast that
20 Tennis Channel wouldn't survive, is that
21 correct, sir?

22 A I didn't think that.

1 Q You didn't think that, but
2 apparently Mr. Shell did, would you agree?

3 A I don't know what Mr. Shell
4 thought, but the sentence says, "The USTA
5 investment probably increases the chances that
6 the channel will survive."

7 Q And so one of the things that Mr.
8 Shell is considering is making the trade
9 involving the USTA so that Versus can get
10 valuable tennis rights, correct, sir?

11 A I think it's broader than that. I
12 think what he says is, "I wonder whether it
13 might make sense to reevaluate." And the
14 reevaluation he is referring to there I think
15 is what he says in the first sentence. It
16 says, "We evaluated and rejected an offer from
17 The Tennis Channel for equity in exchange for
18 distribution."

19 And given the timing -- this is
20 January in 2007 -- so this undoubtedly refers
21 to the 2006 MFN offer that we received. So he
22 is talking about reevaluating that, and

1 apparently what he wants to evaluate is a deal
2 where we give distribution to the Tennis
3 Channel in exchange for equity and U.S. Open
4 rights for Versus.

5 This is obviously a long shot, but do you guys
6 think this is worth evaluating?"

7 Q Well, Mr. Bond, I want to show you
8 one other one that -- because you mentioned
9 that this was in connection with the
10 reevaluation of the recently rejected offer.
11 So let's go back. That's the 2006 MFN offer
12 that Mr. Carroll talked about?

13 A I actually don't recall this e-
14 mail. I'm just -- I'm reading it. It said,
15 "We recently -- a couple of months ago we
16 evaluated and rejected an offer from The
17 Tennis Channel for equity in exchange for
18 distribution." So I was surmising based on
19 the date that that's what it was referring to.

20 Q But you recall the 2006 MFN, do
21 you not, sir?

22 A Yes, absolutely.

1 Q And that's what you think this
2 refers to?

3 A Yes.

4 Q And let me -- if I may approach,
5 Your Honor?

6 JUDGE SIPPEL: Sure.

7 MR. PHILLIPS: I'd like to put
8 before the witness Tennis Channel Exhibit 33.

9 THE WITNESS: Thank you.

10 JUDGE SIPPEL: Thank you. Now, am
11 I paraphrasing it right by saying that that
12 probably refers to the 2006 Tennis Channel MFN
13 offer that Comcast had rejected?

14 THE WITNESS: Yes.

15 JUDGE SIPPEL: Okay. Thank you.

16 BY MR. PHILLIPS:

17 Q And Tennis Channel 33 is a
18 document from Mr. Donnelly to Ann Micka from
19 two weeks earlier. Do you see that, sir?

20 A I do.

21 Q And Mr. Donnelly, he is on the
22 programming side, sir, correct?

1 A Yes, he is.

2 Q And he is one of those people that
3 you asked to help you evaluate the 2006 MFN,
4 correct, sir?

5 A Yes.

6 Q And what he writes is, at the top,
7 under TTC management, so that's Tennis
8 Channel, correct, sir?

9 A Yes.

10 Q "Under TTC management's case, if
11 TTC stays on Comcast's sports tier, the
12 network has no value to [REDACTED], and [REDACTED]
13 [REDACTED] subs in 2012," do you see that, sir?

14 A I do.

15 Q And then, he goes on down and he
16 gives some assumptions, and he goes to the
17 third paragraph basically they -- that means
18 The Tennis Channel, sir, doesn't it?

19 A Yes.

20 Q "They need to launch with us to
21 have [REDACTED]," doesn't it -- is that what it
22 says, sir?

1 A Yes.

2 Q And, in fact, one of the things
3 you found is that you didn't think that the
4 equity that they offered really had sufficient
5 value to justify the deal, isn't that correct,
6 sir?

7 A Yes. The '06 deal, that's
8 correct.

9 Q And this is Mr. Donnelly and Ms.
10 Micka who were in charge of evaluating that
11 equity, sir, correct?

12 A Yes.

13 Q And as long as the distribution
14 was limited to the sports tier, they thought
15 that The Tennis Channel didn't really have any
16 value, did they, sir?

17 A Well, I don't know what they
18 thought. That's what is stated here.

19 Q Okay. And so does this give a new
20 light to the memo that is two weeks later from
21 Mr. Shell to you and Mr. Burke in which he
22 says, "The USTA investment probably increases

1 the chances that the channel will survive"?

2 A I'm not sure the two are -- it's
3 hard to tell if the two are connected. I'm
4 sorry, go ahead.

5 Q In other words, sir, isn't what
6 Mr. Shell is saying here, "Well, you know,
7 maybe it won't go bankrupt after all, and it's
8 going to have these valuable tennis rights.
9 And so if we want to get those valuable tennis
10 rights, we're going to have to make another
11 kind of deal." Isn't that what he's saying
12 here, sir?

13 A No. I think the -- my
14 interpretation of this, when -- the analysis
15 that Joe Donnelly ran back in '06, that was
16 before there was any distribution on DirecTV,
17 because the DirecTV deal was in '07, because
18 that was the subject of the '07 deal.

19 So at that moment in time in '06
20 when he ran his analysis -- and that was back
21 -- what was the date of that? That was in the
22 summer I think of '06, May of '06, that was in

1 May of '06. So this is seven months later,
2 six and a half months later.

3 But when that analysis was run,
4 Tennis Channel had distribution, I believe, on
5 the sports tier generally on other
6 distributors. And it looks to me like he was
7 assuming, then, that he was looking at Tennis
8 Channel as a service that had no distribution
9 on DirecTV, had the distribution on Dish
10 Network, the [REDACTED] subs on
11 Dish Network, and that apparently, when he
12 added up the numbers in the -- at six and a
13 half months later it was [REDACTED] subs.
14 It looks as though there were ongoing equity
15 discussions, I'm not sure.

16 So later, in '07, when the DirecTV
17 deal was done, that obviously increased the
18 sub numbers quite a bit. And I think Joe
19 Donnelly's evaluation at that point of the
20 value of the network was quite a bit higher.

21 Q Now, this was before the DirecTV
22 deal, correct, sir? Do we agree on that?

1 A Yes. Yes, it was.

2 Q All right. And before the DirecTV
3 deal, but at the time that Mr. Burke found an
4 interesting idea to get the equity for
5 carriage, Comcast's own analysis showed under
6 -- and I'm reading now from Ms. Micka's e-mail
7 to Mr. Donnelly in the middle of Tennis
8 Channel 33 -- it says, "Under our base case,
9 if Tennis Channel stays on Comcast's sports
10 tier, the network has no value, negative DCF,
11 and [REDACTED] subs in 2012." Do you see
12 that, sir?

13 A Yes.

14 Q And negative DCF means negative
15 discounted cashflow, does it not, sir?

16 A Yes. That's assuming --

17 JUDGE SIPPEL: Which exhibit are
18 you on?

19 MR. PHILLIPS: That was on 33,
20 Your Honor. I was in the middle e-mail
21 leading -- the middle e-mail from Ann Micka to
22 Joseph Donnelly.

1 JUDGE SIPPEL: That's the long e-
2 mail. No, that's -- I'm sorry.

3 MR. PHILLIPS: Very short.

4 JUDGE SIPPEL: Not that.

5 THE WITNESS: No, it's not that.

6 JUDGE SIPPEL: I've got 55.

7 MR. PHILLIPS: Your Honor, we've
8 got one more.

9 JUDGE SIPPEL: I probably have it
10 here. Okay. Well, go ahead. Go ahead, I'm
11 sorry.

12 MR. PHILLIPS: No. It's just,
13 Your Honor, I have been asking Mr. Bond about
14 the middle e-mail where Ms. Micka writes to
15 Mr. Donnelly the two that had been -- the two
16 Comcast people who had been charged with
17 evaluating that offer to which they write,
18 "Under our base case, if Tennis Channel stays
19 on Comcast's sports tier, the network has no
20 value, a negative discounted cashflow, and
21 [REDACTED] subs in 2012."

22 BY MR. PHILLIPS:

1 Q And then, after that is when Mr.
2 Burke wrote to you and Mr. Shell that he
3 thought that the three-way exchange of The
4 Tennis Channel for equity and USTA was an
5 interesting idea, correct, sir?

6 A Yes. I don't know if the two were
7 connected or not, but this -- this e-mail --
8 one e-mail followed the other in time.

9 Q By a couple of weeks?

10 A Yes.

11 Q During the Christmas period.

12 A Yes, sir.

13 Q Well, sir, I'm done with that for
14 the moment.

15 JUDGE SIPPEL: He has been on the
16 stand for two hours and a bit. Can we think
17 about taking a break?

18 MR. PHILLIPS: I'm happy to take a
19 break, Your Honor. I don't have that much
20 more, but I can't promise that I don't have
21 half an hour.

22 JUDGE SIPPEL: I didn't ask you to

1 promise me that.

2 (Laughter.)

3 MR. PHILLIPS: It might not be
4 that long, but a break would be great.

5 JUDGE SIPPEL: All right. Well,
6 let's do it the honest way here now. We'll
7 come back at 10 of five. Ten of five. We're
8 in recess.

9 (Whereupon, the proceedings in the
10 foregoing matter went off the
11 record at 4:31 p.m. and went back
12 on the record at 5:01 p.m.)

13 JUDGE SIPPEL: Okay. If everybody
14 is ready, why don't we get going.

15 BY MR. PHILLIPS:

16 Q Mr. Bond, in 2008 did you consider
17 Comcast's sports tier viable?

18 A Yes.

19 Q Well, let me -- I want to ask you
20 about one last document, or maybe last, or
21 next to last. I can't make too many promises.

22 A Okay.

1 MR. PHILLIPS: May I approach,
2 Your Honor?

3 JUDGE SIPPEL: Please do.

4 MR. PHILLIPS: This is Tennis
5 Channel Exhibit 51. I believe it's also in
6 evidence.

7 JUDGE SIPPEL: Thank you.

8 BY MR. PHILLIPS:

9 Q Mr. Bond, the first page is an
10 email from you to your boss, Mr. Burke.
11 Correct?

12 A Yes.

13 Q And turning to the second page,
14 let me get caught up here.

15 JUDGE SIPPEL: It's dated January
16 15, 2008. And the subject is "My MBOs for
17 2008."

18 THE WITNESS: That's correct.

19 JUDGE SIPPEL: And MBO stands for?

20 THE WITNESS: Major Business
21 Objective.

22 BY MR. PHILLIPS:

1 Q I'm sorry, I'm here now. And what
2 are the -- can you explain to the Court what
3 this document, Major Business Objectives, is?

4 A Annually, I would prepare a
5 document for my boss, Mr. Burke, which
6 outlined my major business objectives for the
7 upcoming year.

8 Q And that's what this document is.
9 Correct, sir?

10 A It is.

11 Q And one of the entries that you
12 made on this document --

13 A Yes.

14 Q -- which is on page 2 of the MBOs,
15 page 3 of the document --

16 A I see it.

17 Q -- is under "Operations," under
18 Section 4. And I'm going to direct your
19 attention, sir, to 4e, "Enhance the Sports
20 Tier." Do you see that, sir?

21 A I do.

22 Q And you write, "Launch additional

1 product to the sports entertainment pack
2 building its attractiveness and value equation
3 to customers so that it becomes a viable tier
4 used in negotiations and settlements." Do you
5 see, that sir?

6 A I do.

7 Q Have I read it correctly, sir?

8 A You did.

9 Q And the sports entertainment pack
10 that is referred to here is the tier that my
11 client is carried on, is it not, sir?

12 A It is.

13 Q Now, you wanted -- well, first let
14 me ask you a question, sir. It refers to
15 negotiations and settlements. That refers to
16 negotiations and settlements with other
17 networks. Correct, sir?

18 A Yes.

19 Q In fact, in particular, it refers
20 to negotiations and settlements with other
21 Sports Networks. Correct, sir?

22 A Yes.

1 Q And, indeed, one of your major
2 business objectives for 2008 was to enhance
3 the sports tier so that it became a viable
4 tier for the use in negotiations and
5 settlements with other Sports Networks.
6 Correct, sir?

7 A Not exactly. The business
8 objective here, if I can explain it, was to
9 get additional product into the sports and
10 entertainment pack, and that could include not
11 just Sports Networks. It was the sports, and
12 its name had been changed to the sports
13 entertainment pack to broaden its base.

14 The objective was to get
15 additional product into that package so that
16 it would increase its attractiveness to
17 customers, and we could increase the
18 distribution of it, which also increased the
19 revenue we were receiving, also increased the
20 license fees that the networks were getting so
21 that it became more viable, or more attractive
22 to be used in negotiations with networks.

1 Q Because in 2008 it wasn't very
2 attractive to networks, was it, sir?

3 A Well, I think it had a
4 distribution level -- if I can explain. It
5 had a distribution level of about ■ percent.

6 The next step in the distribution equation
7 was D1, the digital basic level at about ■
8 percent. And other operators out there had
9 different tiers at different parts of
10 penetration. And what we did not have is
11 something that was a little bit more in the
12 middle.

13 Q You had D2, did you not, sir?

14 A No.

15 Q You didn't have D2? Wasn't the
16 NFL Network on D2 at this time?

17 A It was, but we had eliminated D2
18 at or about this time period.

19 Q For everybody except the NFL
20 Network?

21 A No, no. D2 -- at or about this
22 time period, D2 was being eliminated. I think

1 at about the time period that NFL moved to the
2 sports tier, D2 was eliminated.

3 Q And, sir, correct me if I'm wrong,
4 but you would -- what you meant by here is
5 also for negotiations and settlements, you
6 wanted to use this in negotiating and settling
7 with other Sports Networks. Correct, sir? I
8 think we established that.

9 A To be honest with you, I don't
10 know what I meant. I, actually, didn't draft
11 this, it was drafted by my team. I don't know
12 what settlements means. Negotiation, though,
13 means I was looking to create more value in
14 the sports tier to create more of an economic
15 there, and some higher penetration of the
16 sports tier.

17 Q Well, sir, after this -- you wrote
18 this, in fact, you moved the Baseball Network
19 -- either around the time or after this you
20 moved the Baseball Network, the Basketball
21 Network, the Hockey Network, all of these went
22 not on the sports tier, but to a more broadly

1 distributed tier, didn't they, sir?

2 A Not exactly. The Baseball Network
3 was not on the sports tier.

4 Q I stand corrected, sir. You're
5 right. But the Hockey Network was moved off
6 the sports tier after this, wasn't it, sir?

7 A Yes. We didn't have a choice in
8 that regard.

9 Q That didn't enhance the Sports
10 Network, did it, sir?

11 A It did not.

12 Q And the Basketball Network was
13 moved off the sports tier. Correct, sir?

14 A That's right. We didn't have a
15 choice there either.

16 Q And, in fact, in negotiating
17 leverage -- well, strike that.

18 I think I heard you testify
19 earlier when Mr. Carroll was asking you
20 questions that the problem of ever increasing
21 fees for Sports Network was one that you felt
22 acutely in your job at Comcast Cable, sir.

1 Isn't that correct?

2 A That is correct.

3 Q So, it would be something that you
4 would want as a way to try to address the
5 problem of Sports Networks and their ever
6 increasing fee demands. Isn't that true, sir?
7 You wanted to address that problem.

8 A Yes, I wanted to address that
9 problem.

10 Q And, in fact, the sports tier was
11 a way to, in fact, negotiate with by telling
12 Sports Networks that they could end up there.
13 Isn't that, sir? That's a possibility, sir,
14 isn't it?

15 A I don't understand the question.

16 Q Isn't it one of the things that
17 could be used against a network in their
18 negotiations, is to tell them that if their
19 price were too high, they could end up on a
20 sports tier, sir?

21 A No.

22 Q And isn't it one of the things

1 that you could tell a Sports Network is if
2 they didn't give you a feature that you wanted
3 that they could end up on a sports tier, sir?

4 A No.

5 Q In fact, when the NFL wouldn't
6 give Sunday Ticket to Comcast, didn't they end
7 up on a sports network, sir?

8 A They ended up on a sports network,
9 yes.

10 Q They did.

11 A Sports tier.

12 Q Sir, did you ever consider, ever
13 consider putting the Golf Network on a Sports
14 Network?

15 A No.

16 Q Did you -- on sports tier?

17 A Sports tier, no.

18 Q And did you ever consider putting
19 Versus on a sports tier, sir?

20 A No.

21 MR. PHILLIPS: Okay. I've got no
22 further questions for you, Mr. Bond.